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EXAMINER

HUTTON JR, WILLIAM D

ART UNIT PAPER NUMBER

2176

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/044,922	<b>Applicant(s)</b> GOODWIN ET AL.	
	<b>Examiner</b> Doug Hutton	<b>Art Unit</b> 2176	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 2-8, 17-23, 32-38 and 47-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 9-16, 24-31, 39-46 and 54-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Applicant's Response***

In Applicant's Response dated 12/02/2005, Applicant amended the Specification, amended Claims 1, 6, 8, 12, 16, 21, 23, 27, 31, 36, 38, 42, 44-46, 51, 53 and 57, and argued against all objections and rejections previously set forth in the Office Action dated 09/02/2005.

All objections to the Claims that were previously set forth are withdrawn.

***Election/Restrictions***

Applicant's traversal of the Election of Species Requirement set forth in the Office Action dated 06/09/2005 is noted. However, the examiner made the Election of Species Requirement FINAL in the Office Action dated 09/02/2005. Thus, Applicant's traversal is moot. If Applicant believes the Election of Species Requirement to be improper, then Applicant should submit a petition to the Director. See 37 C.F.R. 1.144.

Claims 2-8, 17-23, 32-38 and 47-53 remain withdrawn from consideration. Additionally, amended Claims 1, 16, 31 and 46 read on Species 2 and are no longer generic.

***Specification***

The disclosure is objected to because of the following informalities:

- The paragraphs under the heading "*RELATED APPLICATIONS*" should be updated so that the patent numbers for the referenced applications are indicated. Also, Applicant is reminded of the duty to disclose information (see 37 C.F.R. 1.56) material to patentability for the present application and all related applications (i.e., 10/044,923, 10/341,583, 10/341,584, 10/341,585, 10/341,587, 10/341,588, 10/341,591, etc.). The examiner notes that the present invention is not mentioned in many of the above listed applications.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 9-16, 24-31, 39-46 and 54-60 remain rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

*Claims 1 and 9-15:*

The language of the claims raise a question as to whether the claims are directed merely to an abstract idea that would not result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Claim 1 recites a series of method steps, none of which result in a concrete, useful, and tangible result. The preamble of the claim recites that the method is “*for determining a user affinity for a topic*” (see Line 1). Simply “*determining*” a user affinity does not produce a concrete, useful, and tangible result because, once the “*user affinity*” is “*determined*,” **nothing** is done with the user affinity. Stated differently, the user affinity is not displayed to a user or otherwise used in a practical way that produces a concrete, useful, and tangible result. Rather, as currently recited, the “*user affinity*” is simply idle data that exists.

Using the same rationale, Claims 9-15 also recite method steps, none of which result in a concrete, useful, and tangible result.

Accordingly, Claims 1 and 9-15 are directed to non-statutory subject matter.

*Claims 16, 24-31 and 39-45:*

Claims 16, 24-31 and 39-45 recite a “*system*” comprised only of computer software that performs the method of Claim 1. Thus, Claims 16, 24-31 and 39-45 are directed to non-statutory subject matter, as indicated in the above discussion.

*Claims 46 and 54-60:*

Claims 46 and 54-60 recite computer software that performs the method of Claim 1. Thus, Claims 46 and 54-60 are directed to non-statutory subject matter, as indicated in the above discussion.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 9, 10, 13, 15, 16, 24, 25, 28, 30, 31, 39, 40, 43, 45, 46, 54, 55, 58 and 60 remain rejected under 35 U.S.C. 102(b) as being anticipated by Vivacqua, Adriana, et al., “**Agents to Assist in Finding Help**” – Conference on Human Factors & Computing Systems Proceedings, in the Hague, the Netherlands, April, 2000, Pages 65-72.

***Claim 1:***

Vivacqua discloses *a method for determining a user affinity for a topic* (see Pages 65-72 – Vivacqua discloses this limitation in that *Expert Finder*: 1) automatically classifies knowledge by autonomously analyzing documents created, accessed and edited by users; and 2) automatically generates user models that allow accurate matching of query to expert) *comprising the steps of:*

- *assigning a category to at least one object* (see Pages 65-72 – Vivacqua discloses this limitation in that *Expert Finder* comprises a domain model for use

in Java programming. The domain model assigns classes and subclasses to Java objects, which are organized according to purpose or usage.);

- *associating the at least one object with at least one user* (see Pages 65-72 – Vivacqua discloses this limitation in that *Expert Finder* comprises a user profile that is automatically built and maintained by analyzing a user's Java source files (i.e., Java objects) and assessing the user's areas and levels of expertise.);
- *maintaining a record of a number of times that actions are performed on the at least one object by the at least one user and a record of action types of the actions performed on the at least one object by the at least one user* (see Pages 65-72 – Vivacqua discloses this limitation in that *Expert Finder* periodically reads through the user's Java source files to determine how much the user knows about certain Java concepts and classes. *Expert Finder* determines what Java constructs have been used, how often and how extensively, and compares those values to the usage levels for the rest of the participating community to establish the user's levels of expertise.);
- *associating a value with each of the action types of the actions performed on the at least one object by the at least one user* (see Pages 65-72 – Vivacqua discloses this limitation in that *Expert Finder* assigns usage values to Java constructs); and
- *determining a user affinity for the category based on the number of times that actions are performed on the at least one object by the at least one user and the values associated with the action types of the actions performed on the at least*

*one object by the at least one user (see Pages 65-72 – Vivacqua discloses this limitation, as indicated in the cited text).*

*Claim 9:*

Vivacqua discloses *the method of Claim 1, further comprising the step of:*

- *determining whether the at least one user has performed at least one action on the at least one object (see Pages 65-72 – Vivacqua discloses this limitation, as indicated in the cited text).*

*Claim 10:*

Vivacqua discloses the method of Claim 9, further comprising the step of:

- *decaying the user affinity of the at least one user if a determination is made that the at least one user has not performed any actions on the at least one object (see Pages 65-72 – Vivacqua discloses this limitation, as indicated in the cited text).*

*Claim 13:*

Vivacqua discloses *the method of Claim 9, further comprising the step of:*

- *resetting the user affinity if a determination is made that the at least one user has performed the at least one action on the at least one object (see Pages 65-72 – Vivacqua discloses this limitation, as indicated in the cited text).*



*Claim 15:*

Vivacqua discloses *the method of Claim 1, further comprising the step of:*

- *enabling the user to decline the user affinity (see Pages 65-72 – Vivacqua discloses this limitation, as indicated in the cited text).*

*Claims 16, 24, 25, 28 and 30:*

Claims 16, 24, 25, 28 and 30 merely recite a system that performs the method of Claims 1, 9, 10, 13 and 15, respectively. Vivacqua discloses a computer system. Thus, Vivacqua discloses every limitation of Claims 16, 24, 25, 28 and 30, as indicated in the above rejections for Claims 1, 9, 10, 13 and 15.

*Claims 31, 39, 40, 43 and 45:*

Claims 31, 39, 40, 43 and 45 merely recite a system that performs the method of Claims 1, 9, 10, 13 and 15, respectively. Vivacqua discloses a computer system. Thus, Vivacqua discloses every limitation of Claims 31, 39, 40, 43 and 45, as indicated in the above rejections for Claims 1, 9, 10, 13 and 15.

*Claims 46, 54, 55, 58 and 60:*

Claims 46, 54, 55, 58 and 60 merely recite computer software that performs the method of Claims 1, 9, 10, 13 and 15, respectively. Vivacqua discloses computer software. Thus, Vivacqua discloses every limitation of Claims 46, 54, 55, 58 and 60, as indicated in the above rejections for Claims 1, 9, 10, 13 and 15.

Claims 1, 9, 14-16, 24, 29-31, 39, 44-46, 54, 59 and 60 remain rejected under 35 U.S.C. 102(e) as being anticipated by Newbold, U.S. Patent Application Publication No. US Patent Application Publication No. 2002/0087600.

*Claim 1:*

Newbold discloses *a method for determining a user affinity for a topic* (see Figures 1-5; see Pages 1-6 – Newbold discloses this limitation, as clearly indicated by the cited figures and text) *comprising the steps of:*

- *assigning a category to at least one object* (see Figures 1-5; see Pages 1-6 – Newbold discloses this limitation, as clearly indicated by the cited figures and text);
- *associating the at least one object with at least one user* (see Figures 1-5; see Pages 1-6 – Newbold discloses this limitation, as clearly indicated by the cited figures and text);
- *maintaining a record of a number of times that actions are performed on the at least one object by the at least one user and a record of action types of the actions performed on the at least one object by the at least one user* (see Figures 1-5; see Pages 1-6 – Newbold discloses this limitation, as clearly indicated by the cited figures and text);
- *associating a value with each of the action types of the actions performed on the at least one object by the at least one user* (see Figures 1-5; see Pages 1-6 – Newbold discloses this limitation, as clearly indicated by the cited figures and text);

- *determining a user affinity for the category based on the number of times that actions are performed on the at least one object by the at least one user and the values associated with the action types of the actions performed on the at least one object by the at least one user (see Figures 1-5; see Pages 1-6 – Newbold discloses this limitation, as clearly indicated by the cited figures and text).*

*Claim 9:*

Newbold discloses the method of Claim 1, further comprising the step of:

- determining whether the at least one user has performed at least one action on the at least one object (see Figures 1-5; see Pages 1-6 – Newbold discloses this limitation, as clearly indicated by the cited figures and text).

*Claim 14:*

Newbold discloses the method of Claim 1, further comprising the step of:

- enabling a system administrator to decline the user affinity (see Figures 1-5; see Pages 1-6 – Newbold discloses this limitation, as clearly indicated by the cited figures and text).

*Claim 15:*

Newbold discloses the method of Claim 1, further comprising the step of:

- enabling the user to decline the user affinity (see Figures 1-5; see Pages 1-6 – Newbold discloses this limitation, as clearly indicated by the cited figures and text).

*Claims 16, 24, 29 and 30:*

Claims 16, 24, 29 and 30 merely recite a system that performs the method of Claims 1, 9, 14 and 15, respectively. Newbold discloses a computer system. Thus, Newbold discloses every limitation of Claims 16, 24, 29 and 30, as indicated in the above rejections for Claims 1, 9, 14 and 15.

*Claims 31, 39, 44 and 45:*

Claims 31, 39, 44 and 45 merely recite a system that performs the method of Claims 1, 9, 14 and 15, respectively. Newbold discloses a computer system. Thus, Newbold discloses every limitation of Claims 31, 39, 44 and 45, as indicated in the above rejections for Claims 1, 9, 14 and 15.

*Claims 46, 54, 59 and 60:*

Claims 46, 54, 59 and 60 merely recite computer software that performs the method of Claims 1, 9, 14 and 15, respectively. Newbold discloses computer software. Thus, Newbold discloses every limitation of Claims 46, 54, 59 and 60, as indicated in the above rejections for Claims 1, 9, 14 and 15.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 29, 44 and 59 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Vivacqua.

*Claim 14:*

As indicated in the above discussion, Vivacqua discloses every limitation of Claim 1. Vivacqua also discloses enabling a user to decline the user affinity. Vivacqua also discloses a computer network comprising multiple users in a client-server setup. The client users may use *Expert Finder* to locate other users on the network that are considered to be experts in a certain area.

Vivacqua fails to expressly disclose:

- *enabling a system administrator to decline the user affinity.*

However, it was well known by one of ordinary skill in the art at the time the invention was made to allow a network administrator the capability of disallowing client user access to information on a computer network. At the time the invention was made, the network administrator controlled information on a computer network and granted access rights to the client users. The network administrator would have denied access to information on a user's profile for the purpose of protecting confidential or sensitive information in the user's profile. As previously indicated, Vivacqua already discloses

enabling a user to decline the user affinity. This same capability would likely have also belonged to the network administrator. Even though Vivacqua does not expressly disclose this feature, one of ordinary skill in the art at the time the invention was made would immediately know that this capability – declining the user affinity – could have easily been granted to the system administrator.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method, disclosed in Vivacqua, to include:

- *enabling a system administrator to decline the user affinity,*

for the purpose of protecting confidential or sensitive information in the user's profile.

*Claim 29:*

Claim 29 merely recites a system that performs the method of Claim 14. Vivacqua discloses a computer system. Thus, Vivacqua discloses every limitation of Claim 29, as indicated in the above rejection for Claim 14.

*Claim 44:*

Claim 44 merely recites a system that performs the method of Claim 14. Vivacqua discloses a computer system. Thus, Vivacqua discloses every limitation of Claim 44, as indicated in the above rejections for Claim 14.

*Claim 59:*

Claim 59 merely recites computer software that performs the method of Claim 14. Vivacqua discloses computer software. Thus, Vivacqua discloses every limitation of Claim 59, as indicated in the above rejection for Claims 14.

Claims 11, 12, 26, 27, 41, 42, 56 and 57 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Vivacqua, in view of Gilmour, U.S. Patent No. 6,832,224.

*Claim 11:*

As indicated in the above rejection, Vivacqua discloses every limitation of Claim 10.

Vivacqua fails to expressly disclose:

- *decaying the user affinity at a constant rate.*

Gilmour teaches *a method for determining a user affinity for a topic* (see Figures 1-23; see Column 1, Line 1 through Column 32, Line 44 – Gilmour teaches this limitation, as indicated in the cited figures and text), *wherein the step of decaying the user affinity decays at a constant rate* (see Column 25, Line 22 through Column 26, Line 67 – Gilmour teaches this limitation in that the knowledge management tool decays the confidence value for a term by 5% per month), for the purpose of preventing a potentially relevant term ignored or overlooked when calculating a confidence level for a user.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method, disclosed in Vivacqua, to include the step of:

- *decaying the user affinity at a constant rate,*

for the purpose of preventing a potentially relevant term ignored or overlooked when calculating a confidence level for a user, as taught in Gilmour.

*Claim 12:*

Vivacqua fails to expressly disclose:

- *a constant rate that is a predetermined percentage per predetermined period of time.*

Gilmour teaches *a method for determining a user affinity for a topic* (see Figures 1-23; see Column 1, Line 1 through Column 32, Line 44 – Gilmour teaches this limitation, as indicated in the cited figures and text), *wherein the constant rate is a predetermined percentage per predetermined period of time* (see Figures 1-23; see Column 1, Line 1 through Column 32, Line 44 – Gilmour teaches this limitation, as indicated in the cited figures and text), for the purpose of preventing a potentially relevant term ignored or overlooked when calculating a confidence level for a user.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method, disclosed in Vivacqua, to include:



- *a constant rate that is a predetermined percentage per predetermined period of time,*

for the purpose of preventing a potentially relevant term ignored or overlooked when calculating a confidence level for a user, as taught in Gilmour.

*Claims 26 and 27:*

Claims 26 and 27 merely recite a system that performs the method of Claims 11 and 12, respectively. Vivacqua discloses and Gilmour teaches a computer system. Thus, Vivacqua, in view of Gilmour, discloses/teaches every limitation of Claims 26 and 27, as indicated in the above rejections for Claims 11 and 12.

*Claims 41 and 42:*

Claims 41 and 42 merely recite a system that performs the method of Claims 11 and 12, respectively. Vivacqua discloses and Gilmour teaches a computer system. Thus, Vivacqua, in view of Gilmour, discloses/teaches every limitation of Claims 41 and 42, as indicated in the above rejections for Claims 11 and 12.

*Claims 56 and 57:*

Claims 56 and 57 merely recite computer software that performs the method of Claims 11 and 12, respectively. Vivacqua discloses and Gilmour teaches computer software. Thus, Vivacqua, in view of Gilmour, discloses/teaches every limitation of Claims 56 and 57, as indicated in the above rejections for Claims 11 and 12.

### ***Response to Arguments***

Applicant's arguments filed 12/02/2005 have been fully considered but they are not persuasive.

#### ***Arguments for 101 Rejections:***

Applicant argues that the 101 rejections should be withdrawn because the BPAI has ruled that there is no "technical arts" test to determine patent eligible subject matter under 101. See *Response* – Page 14, third full paragraph.

The examiner agrees that the "technical arts" test is no longer a basis for a 101 rejection. However, this fact does not obviate the 101 rejections. The subject matter recited in the claims remains non-statutory for the reasons indicated in the above 101 rejections.

#### ***Arguments for 102 Rejections, based on Vivacqua:***

Applicant argues that Vivacqua fails to disclose "*determining a user affinity for the category based on the number of times that actions are performed on the at least one object by the at least one user and the values associated with the action types of the actions performed on the at least one object by the at least one user,*" as recited in Claim 1, because Vivacqua describes a system in which only a single type of action is monitored (i.e., the authoring of Java source code files). Applicant supports the argument by stating that Vivacqua does not disclose "values associated with different

types of actions,” thus implicitly stating that Claim 1 includes this limitation. See *Response* – Page 14, fourth full paragraph through Page 15, second paragraph.

The examiner disagrees.

The relevant claim language is:

- *maintaining a record of a number of times that actions are performed on the at least one object by the at least one user and a record of action types of the actions performed on the at least one object by the at least one user;*
- *associating a value with each of the action types of the actions performed on the at least one object by the at least one user; and*
- *determining a user affinity for the category based on the number of times that actions are performed on the at least one object by the at least one user and the values associated with the action types of the actions performed on the at least one object by the at least one user.*

See Claim 1, Lines 6-14.

Thus, the present invention maintains records of:

- the number of times “actions are performed” on the object; and
- “action types” performed on the object.

The claims fails to positively recite that the actions performed on the object include a **plurality** of action types. Thus, in response to Applicant's argument that the reference fails to show certain features of applicant's invention, it is noted that the feature upon which applicant relies (i.e., “values associated with **different types** of actions”) is not recited in the rejected claims. Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Additionally, Vivacqua discloses monitoring **multiple** types of actions for a particular object for a particular user. Vivacqua discloses that *Expert Finder* records each Java construct used by the user, and how often and how extensively each Java construct is used. *Expert Finder* records values of those determinations and compares the values to usage levels of other users of the system. Vivacqua also discloses that *Expert Finder* records, for each Java class, the number of times the user has used the class and the number of times the user has extended the class.

*Arguments for 102 Rejections, based on Newbold:*

Applicant argues that Newbold does not qualify as prior art under 102(e) because, at the time the present invention was made, both Newbold and the present invention were assigned to IBM. Therefore, Applicant argues, the common assignee exception applies. See Response – Page 15, fourth paragraph .

The examiner disagrees.

35 U.S.C. 102(e) states:

A person shall be entitled to a patent unless —

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Newbold describes the present invention, as indicated in the above 102 rejections. Newbold was published on 07/04/2002 and has an effective filing date of 09/22/1999. Finally, Newbold is an application filed "by another" in that the inventive entity of Newbold differs from the inventive entity of the present invention. Thus, Newbold qualifies as prior art.

Applicant appears to be trying to apply the common assignee prior art exclusion under 35 U.S.C. 103(c) to a 102(e) rejection.

*Arguments for 103 Rejections, based on Vivacqua and Gilmour:*

Applicant argues that Vivacqua, in view of Gilmour, fails to disclose/teach "determining a user affinity for the category based on the number of times that actions are performed on the at least one object by the at least one user and the values associated with the action types of the actions performed on the at least one object by the at least one user," because Gilmour fails to teach determining the confidence levels based on values associated with type of actions performed on the emails by the users. See *Response* – Page 14, fourth full paragraph through Page 15, second paragraph.

Applicant's argument is moot, because Vivacqua discloses this limitation, as indicated in the above discussion.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Doug Hutton whose telephone number is 571-272-4137. The examiner can normally be reached on Monday-Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon, can be reached at (571) 272-4136. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

WDH  
February 8, 2006

A handwritten signature in black ink, appearing to read 'D. Hutton', with a stylized flourish at the end.

**DOUG HUTTON  
PRIMARY EXAMINER  
TECH CENTER 2100**